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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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BS

FILE:

SRC 06 001 52799

Office: TEXAS SERVICE CENTER

Date:

MAR 06 2007

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued the decision on October 22, 2005. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. The regulation at 8 C.F.R. § 103.2(a)(2) requires that an application or petition be signed. The regulation at 8 C.F.R. § 103.2(a)(7) provides that an application or petition shall be regarded as properly filed as of the receipt date "if it is properly signed and executed." Although counsel dated the appeal November 21, 2005, it was received by Citizenship and Immigration Services (CIS) *properly signed* on December 1, 2005, or 40 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.¹

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ The petitioner also filed a motion to reopen with the director that remains adjudicated at this time.